SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
A CORPORATION,
Petitioner,

vs.

H. G. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
ET AL.

PETITIONER'S REPLY BRIEF.

JAY BOWERMAN,
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PETITIONER'S REPLY BRIEF.

The brief of respondents filed in this Court on the — day of December, 1941, evidences a misconception of the record herein in important respects. The main contentions of respondents in such brief, the argument made, the citation of cases, and other legal references in support thereof are based upon an erroneous view of the record, therefore not applicable to the issues and record in the case at bar.

Petitioner Did Not Lease Boats to Fishermen.

Respondents' brief, on page 6, states:

"Among the fishermen from whom the plaintiff procured its fish were five members of the Union who

> *leased* their boats from the petitioner, using power boats heretofore belonging to the petitioner, sold to them by the petitioner under the agreement that said fishermen would sell and deliver their fish caught in the Smith and Umpqua rivers to the petitioner, until the purchased price was paid. In no case had any of these five fisherman paid for the boats. In one case the sale had been consummated and a chattel mortgage taken. (Findings of Fact XIV, XXXIV, R. 65, 84.) (Italics supplied.)

On page 16 respondents in such brief further assert:

> "• • • The fact that the plaintiff employs the device of a *lease* in the operation of its boats does not alter the fundamental control it exercises over the fishermen who work on these boats and deliver their catch to it. • • •" (Italics supplied.)

Respondents in their brief make several references to the asserted "leasing" of petitioner's boats to the said five fishermen and from such premises argue and contend that such five fishermen were employees of petitioner.

The record in this case shows that in the original complaint Paragraph 13 (R. 13), the word "leased" as same appears at beginning of line 5, p. 13 of the record, was amended by deleting the word "leased" and substituting the word "sold" and that the word "heretofore" was inserted after the word "boats" in line 4 of said paragraph. These amendments accomplishing the above changes were included in the order of the trial court as the same appears on page 38 of the record.

The above amendment to Paragraph 13 eliminated all reference to the word "lease" applicable to petitioner's operation and amended this paragraph so that it would read as follows:

> "That at least five of said fishermen, who, during the current fishing season have been and were, up to April

29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said areas to the plaintiff, the plaintiff agreeing to pay the full going market price for said fish."

Findings of Fact XIV (R. 65) sustain the foregoing allegations as follows:

> "That at least five of said fishermen, who, during the current fishing season have been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said areas to the plaintiff until their purchase price is paid; the plaintiff agreeing to pay the full going market price for said fish."

That the respondents fully understood that the relationship existing between petitioner and the said five fishermen was that of a seller and purchaser and not that of a lessor and lessee, appears from findings of fact of XXXIV (XVII) (R. 84), which finding of fact the respondents specifically asked the Court to find (R. 81) and is as follows:

> "That at least five of said fishermen, who, during the current fishing season having been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, old to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said area to the plaintiff until their purchase price is paid; said purchasers had not paid for said boats, one sale had been consummated and a chattel mortgage had been taken. This purchaser and the other prospective purchasers had been fishing and selling their fish to the plaintiff until required to desist by the Pacific Coast Fishermen's Union and its members, whereupon

they ceased selling fish to the plaintiff, and have not sold fish to the plaintiff since."

That the petitioner is not itself engaged in fishing is shown by finding of fact XXI (R. 75-76) as follows:

> "That the plaintiff is not engaged in fishing itself, but purchases fish from fishermen, and at the present time produces a large amount of canned fish from its two processing plants in Alaska, and from its floating cannery the steamship 'Mennon', and produces a large amount of canned fish from its two plants in the state of Washington and its two plants in the State of Oregon, and at the present time provides more than 60% of all of the processed (69) fish produced in the state of Oregon, as well as a very substantial amount of the processed fish produced in the state of Washington, and Alaska.
>
> "As a condition precedent to buying any fish from any member of the Pacific Coast Fishermen's Union, said organization has required and now requires that plaintiff enter into a contract whereby it will purchase no fish from any person not a member of said organization, and the court finds that if such contract had been entered into the plaintiff would have become a party to said plan, scheme and conspiracy of said defendants, and would thus have been guilty of violating the Anti-Trust Laws of the United States."

And also the last sentence of finding XXXIV (XIX) (R. 87) is in the following language, "Plaintiff does no fishing".

The trial court in its oral opinion (R. 39) said:

"Plaintiff Does No Fishing Itself".

That the Pacific Coast Fishermen's Union is composed of fishermen who are producers and independent contractors appears from findings of fact II (R. 55-56), VI, VII (R. 58-60), XV, XVI (R. 66-69), XXI, XXII (R. 75-76),

XXVIII (11) (R. 81-82), XXXV (XVIII), XXXVI (XIX), XXXVII (XX) (R. 85-88).

The foregoing finding and others to the same effect clearly establish that an "employer-employee" relationship is not involved in this case.

Reason for the Suit.

Respondents brief apparently is presented upon the assumption that petitioner, up until the institution of this suit, was a member of the Commercial Fishermen's Association, an organization of packers and dealers of fish and other marine products of the Pacific Coast.

(Respondents brief, page 4.)

This is an incorrect assumption as it appears from the findings of fact, and the opinion of the Court (R. 40).

Near the close of the 1938 fishing season, certain fishermen who were not members of the respondents Pacific Coast Union were refused any market for their fish in the State of Oregon or on the Washington side of the Columbia River. The reason for this closed market was that all packers and dealers including petitioner were parties to contracts with the respondent Pacific Coast Fishermen's Union in which contracts the packers and fish dealers agreed not to purchase fish from any fishermen not members of the Pacific Coast Fishermen's Union.

This resulted in a threat by these non-member fishermen that they would institute civil and criminal proceedings against the petitioner and the other parties to said contracts for violating the Federal anti-trust law. The then existing contracts expired at the close of the 1938 fishing season.

The petitioner refused to enter into a new contract containing this exclusive feature for the year 1939 and shortly prior to instituting this suit, petitioner withdrew from membership in the Commercial Fishermen's Association.

(Findings of fact XII (R. 62-64) XVI, XVII, XVIII (R. 67-74.)

When petitioner refused to execute the exclusive contract for the year 1939, respondents by threats of fines, intimidations and coercion (R. 63-84) caused all fishermen in said waters to cease selling any fish to petitioner although the fishermen were willing to continue making said sales (R. 62-84).

The respondents on page 8 of their brief refer to the court's finding No. XIX (R. 74) that there is an open competitive market for fish along the coast of California, Oregon, Washington and Alaska.

This market resulted from the refusal of petitioner to join the respondents in their conspiracy to continue the monopoly of this market through the said exclusive contract (R. 71-75).

No Labor Dispute Involved.

It clearly appears from finding of fact II (R. 55-56), XIV (R. 65-66), XX, XXI, XXII (R. 75-76), that no labor dispute is involved in this cause and that the Norris-LaGuardia Act is without application to the issues or record in the case at bar.

Finding of fact XVIII (R. 71-74) is pertinent and important. It reads as follows:

> "During said years (1936-1937-1938), said defendant Pacific Coast Fishermen's Union had procured contracts with all of the buyers of fish located in the state of Oregon, and along the Columbia River in the State of Washington whereby the buyers would not purchase fish from anyone not a member of said organization, and said Pacific Coast Fishermen's Union induced the signing of said contracts by the threat that it would prevent all of its members from dealing with any buyers unless (66) he executed a contract containing such exclusive features. That by the terms of said contracts

neither said Pacific Coast Fishermen's Union, nor any of its members, undertook any obligation whereby any members of the said Pacific Coast Fishermen's Union would fish, or sell any fish to anyone, but said contracts, as interpreted by both parties thereto, expressly prohibited the buyer from purchasing from anyone not a member of said Pacific Coast Fishermen's Union, and as hereinabove found and determined, said organization, through its membership controlled 90% or more of the troll fishermen, and in areas 100% of all fishing. Its control of the Umpqua River and Smith River was and is complete and said area produces more than one million pounds of fish per annum."

That the exclusive feature of the contract entered into in 1936, 1937 and 1938 by the Pacific Coast Fishermen's Union and its members, and all, or practically all of the buyers of fish in Oregon and/or Coast points in the State of Washington, and in California as far south as Crescent City, is substantially the same as the contract demanded by said Pacific Coast Fishermen's Union and its members for the year 1939, which is as follows:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It was admitted by the plaintiff, and the principal officers of the defendant Pacific Coast Fishermen's Union while on the witness stand, that said language means that no buyer signing said contract is permitted to purchase any fish from any person not a member of said Pacific Coast Fishermen's Union.

The defendant Leroy Chenowith is secretary of the Reedsport local of the defendant Pacific Coast Fishermen's Union and a member of its organization committee and active in its affairs. The defendant Walter Weaver is also a member of said organization and of said Reedsport local,

and is a member of the managing committees of said local organization.

The defendant Charles Marks and defendant Clyde Chase are not fishermen and are not members of the Pacific Coast Fishermen's Union, but each is a fish buyer operating, and each having a place (67) of business at the mouth of the Umpqua River. Each has his own plant and is an extensive buyer of fish from fishermen belonging to defendant Pacific Coast Fishermen's Union.

The defendant Chenowith works for the defendant Chase as a buyer and receiver of fish, but the plant is non-union and no union men work for defendant Chase, except the defendant Chenowith.

The defendant Weaver buys fish for Banks & Cole, another non-union fish dealer.

Defendant Marks, in his fish operations, conducts a non-union shop and buys his fish from the members of Pacific Coast Fishermen's Union.

That said Marks, Chase, and Banks & Cole, since the defendant Pacific Coast Fishermen's Union ordered its members to refrain from selling fish to the plaintiff, have been paying 2¢ for male shad, 20¢ for female shad, and 9¢ per pound for salmon; and at the same time, and in the same market, the plaintiff has been paying 2¢ for male shad, 22¢ for female shad, and 10¢ per pound for salmon, notwithstanding which fact, the defendant Pacific Coast Fishermen's Union has been able to, and has prevailed upon its members (with the exception of approximately fifteen) to sell their fish to Banks & Cole, and to defendants Marks and Chase, and defendants Marks and Chase have entered into a contract with the Pacific Coast Fishermen's Union containing said exclusive clause, whereby they agree not to purchase from any person not a member of said organization."

From such finding it follows that the respondents Pacific Coast Fishermen's Union in its conduct to force the execution of the exclusive provision of the contract was not endeavoring to carry out the principles and policy of the Norris-LaGuardia Act, but had the motive and purpose of creating and maintaining a monopoly and fixing the prices of the product in the fish industry in Alaska, Oregon, Washington and California.

The Fishing Industry Act Does Not Exempt Respondents from the Provisions of the Anti-Trust Acts.

The trial court found (R. 75, 89-90) that the Pacific Coast Fishermen's Union substantially conforms to Sec. 521 and 522 title 15 U. S. C. A. and held that that fact neither exempted or excluded its activities from the operation or provisions of the Anti-Trust Acts and such ruling is in accordance with the decision of this Court in *United States* v. *Borden Co.*, 308 U. S. 188.

Monopoly and Price Fixing Arrangement of Respondents Violates Federal Anti-Trust Laws.

That the monopoly and price fixing arrangement of the respondents is a violation of the Federal Anti-Trust Laws is established by the decisions of this Court cited on pages 5 and 6 of petitioners brief in support of the petition for Certiorari and on page 7 petitioners first reply brief, and to the cases cited and refered to in *Allen Bradley Co. et al.* v. *Local Union No. 3 International Brotherhood of Electrical Workers et al.* (U. S. Dis. Ct. N. Y. decided September 30, 1941) 41 F. Supp. 727, 744-750 Advance sheet No. 6 December 29, 1941.

The respondents' argument the petitioner is not entitled to injunctive relief because of the provisions of the Norris-LaGuardia Act is untenable.

The scope of the Norris-LaGuardia Act is limited by Title 29, Section 102 U. S. C. A., in which the public policy of the U. S. C. A. is defined in substance as follows:

> "Whereas under the prevailing economic conditions, developed with the aid of governmental authority for *owners* of property to organize in the corporate and other forms of *ownership* association, the individual unorganized *worker* is commonly helpless to exercise actual liberty of *contract* and to protect his freedom of *labor* * * *". (Italics supplied.)

In their interpretation of Section 13 appears to be contended that because the petitioner and the respondents, Marks and Chase and all of the other respondents are engaged in the common industry of fishing and fish processing, that the Norris-LaGuardia Act withdraws the right to an injunction in any and every controversy.

Because the petitioner and all of the respondents are engaged in the fishing business, it is argued that injunctive relief in any kind of a case must be denied to them in the Federal Court because of the supposed meaning of the Norris-LaGuardia Act.

It is our contention that Subsection a and b of section 13 are limited by the provisions of Sub-section c and that the words, "labor dispute" have no different meaning in Section 13 than they have in any other ordinary use.

There being no relationship of employer and employee, there being no employment of anyone, there can be no labor dispute. Under the findings of fact in this case, there was no labor dispute either within the meaning of the Norris-LaGuardia Act or otherwise.

The Judgment and Decree of the Circuit Court of Appeals should be reversed and the Judgment and Decree of the District Court should be affirmed.

Respectfully submitted, JAY BOWERMAN,
RALPH E. MOODY,
Attorneys for Petitioner.

(8190)

RESPONDENT'S BRIEF IN OPPO-SITION

In the Supreme Court of the United States

OCTOBER TERM, 1941

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H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members,

Respondents.

RESPONDENTS' BRIEF OPPOSING ISSUANCE OF WRIT OF CERTIORARI

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REFERENCE TO OPINIONS BELOW

This matter is before the court upon petitioner's petition for writ of certiorari, seeking a review of a decision of the United States Circuit Court of Appeals for the Ninth Circuit. Said decision having been rendered March 29, 1941 (Tr. 146-154).

The original decision of the District Court of the United States for the District of Oregon rendered on June 14, 1939, is contained in Columbia River Packers Assn. v. Hinton, 34 Fed. Supp. 971.

JURISDICTION

Petitioner invokes the jurisdiction of this court under Section 240(a) of the Act of February, 1925, Title 28, Section 347, U.S.C.A.

STATEMENT OF THE CASE

The question in this case is whether or not this court should grant a writ of certiorari and review the decision of the United States Circuit Court of Appeals for the Ninth Circuit, rendered in the within cause on the 29th day of March, 1941.

The Circuit Court of Appeals tried the case on the record which did not contain a transcript of testimony, but the facts of the case are disclosed by the extensive findings of fact entered by the trial court. (Tr. 54)

Petitioner is engaged in the fishing industry, and under the authority of its charter is engaged in catching, purchasing, processing, canning and distributing fish and other marine products. (Tr. 3)

Respondents are organized into a trade association known as "The Pacific Coast Fishermen's Union" (Tr. 7) and constitute a large percentage—more than a majority—of persons engaged in cap-

turing fish in the Pacific Ocean and tributaries. (Tr. 16)

Some of the members of respondents' union were using power boats belonging to petitioner, agreeing to deliver all their catch to petitioner. (Tr. 13) Petitioner furnished certain facilities for defendants, such as net racks, tanning tanks and a mooring place for the convenience of the fishermen involved.

The trial court found that the Pacific Coast Fishermen's Union had bargained for its members with plaintiff and other persons in the industry through 1936, 1937 and 1938, and had established contracts regarding working conditions and had established a closed shop contract in the following language:

> "That it is further understood by all parties that the union members shall not be required to work with, and/or alongside non-union employees." (Tr. 72)

In the spring of 1939 petitioner refused to renew its said contract, all of which gave rise to this controversy.

The court found that the constitution and by-laws of the Pacific Coast Fishermen's Union provide among other things that "the union members shall not deliver catches outside of union agreements." That in inducing said fishermen to decline and refuse to sell fish to petitioner, respondents did not use any threats of force and violence, but the

fishermen who so declined to deliver fish were prompted to do so by reason of the provisions of the constitution and by-laws of the Pacific Coast Fishermen's Union, and by the knowledge that they would be subject to fines and other disciplinary action. (Tr. 83)

The court further found:

"The Pacific Coast Fishermen's Union is an organization of persons engaged in fishing and maintains its principal office at Astoria, Oregon; that it is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations; that the Pacific Coast Fishermen's Union issues charters to various local unions in various ports of the states of Washington and Oregon and have issued such charters to persons engaged in fishing at Reedsport, Westport, Coquille, and other Oregon and Washington ports; that it has been the custom of these local unions so chartered to enter into contractual relationships as aforesaid with plaintiff and other packers and buyers.

"The Pacific Coast Fishermen's Union is also a member of the Maritime Federation of the Pacific; the Maritime Federation of the Pacific is a federation of labor organizations so federated within said organizations are the International Longshoremen and Warehousemen's Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union, and many other organizations whose membership is engaged in maritime work on the Pacific Coast." (XXXVII (XXI) Tr. 87)

"The Court finds that prior to the organization of the Pacific Coast Fishermen's Union

those engaged in fishing were compelled to sell their products at low prices; that during the period of the recent general depression silverside salmon on occasions were sold to the packers and buyers as low as one cent per pound, and (77) concurrent therewith the retail price of the same product sold to the public in the same area for 'between 15 and 20 cents' per pound; that it would therefore seem that it is necessary for those engaged in fishing to arrange, by lawful contractual relationships, agreements for the sale of their products prior to taking of the fish and other marine products. There is no evidence offered in this case tending to show that the wholesale or retail prices paid by consumers have been enhanced by the activities of these defendants." (XXXVIII (XXI) Tr. 88)

"The Court finds that plaintiff and other packers and dealers of fish and other marine products have heretofore been organized into an organization called the Commercial Fisheries Association; that said association has throughout its existence bargained with the Pacific Coast Fishermen's Union, and has been the collective bargaining agency for packers and dealers; that shortly prior to the institution of this suit plaintiff withdrew from said organization." (XXXIX (XXII) Tr. 89)

"That defendants Chas. Marks and Clyde Chase own and operate their separate fleets of fishing boats through an arrangement whereby members of the Pacific Coast Fishermen's Union lease boats from these defendants and turn in their catch and are paid the market price for the same; that it has been the custom of the trade for many years past that where the buyer or processor furnished boats as aforesaid it is tacitly understood that such fishermen shall deliver their catch to the buyer or processor owning the boats." (XLIV (XXVII) Tr. 92)

"That for several years past the defendants Charles Marks and Clyde Chase, as well as plaintiff Columbia River Packers Association, have entered into contractual relationships yearly with the Pacific Coast Fishermen's Union, which contracts have provided, among other things,

> 'That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-union employees.'

That during the early part of 1939 the plaintiff refused to enter into such agreement but that defendant Chas. Marks and Clyde Chase did enter into such agreement with defendants. The evidence does not disclose that defendants Chas. Marks and Clyde Chase have committed any overt acts other than entering into said contract with the Pacific Coast Fishermen's Union." (XLV (XXVIII) Tr. 92)

The foregoing findings of fact and a review of the record will disclose that the case involves persons engaged in the same industry, having a direct interest therein; that injunctive relief is sought against these respondents and that the case involves and grows out of a "labor dispute" within the meaning of the Norris-LaGuardia Act, Title 29, Sections 101-114, U.S.C.A.

The transcript of record shows:

(1) That plaintiff's complaint does not meet the procedural requirements of Section 107 of the Norris-LaGuardia Act. Neither are the Court's findings sufficient to support the issuance of an injunction where a labor dispute is involved.

(2) That plaintiff has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of governmental machinery of mediation, and particularly plaintiff has failed to seek any relief in conformity with Sections 521 and 522, Title 15, U.S.C.A., which provides for investigation by the United States Secretary of Commerce whose duty it is to investigate and to hold hearings to determine whether or not practices carried on by fishermen organized in conformity with the Act, are such as to restrain commerce unreasonably, or unduly enhance the price of marine products, and to make such orders as may be appropriate under the circumstances.

(3) That the court issued a blanket injunction, and did not limit the injunction to specific acts, as required by Section 109 of the Norris-LaGuardia Act, where labor disputes are involved.

THE DECISION OF THE COURT OF APPEALS IN THE CASE AT BAR DECIDED A QUESTION WHICH HAS HERETOFORE BEEN SETTLED BY THIS COURT AND THERE IS NO CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

Lauf v. E. G. Shinner & Co., 303 U.S. 323.

New Negro Alliance v. Grocery Co., 303 U.S. 552.

Unites v. Hutcheson, et al., 61 Supreme Court Reporter 463.

Milk Wagon Drivers' Union, et al. v. Lake Valley Farm Products, Inc., et al., 311 U. S. 91.

Insofar as the application of the Norris-LaGuardia Act is concerned, the case at bar is on all fours with the Milk Wagon Drivers' case, supra; both cases present the two questions:

First, does there here exist a "labor dispute" within the meaning of the Act?

Second, if there is a "labor dispute", must the jurisdictional prerequisites of the Act be complied with before injunctive process can be used against a union accused of violating the Sherman Anti-Trust Act?

The Milk Wagon Drivers' case involves "vendors"—persons buying milk from wholesalers and selling and delivering milk to the retail trade.

The case at bar involves fishermen who take fish and other marine products, deliver the same to established packers for processing and sale, each having organized themselves into trade associations or unions; and in the Fisehrmen's case, have a collective bargaining history of several years' standing.

In the Milk Drivers' Union case, supra, the court said:

> "The Norris-LaGuardia Act applies to labor disputes between 'persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein'. Here, all of the parties have 'direct or indirect interests' in the production, processing, sale, and distribution of milk. Plaintiffs, who sought the injunction, were four: One was the Chicago local of a C.I.O. union, the Amalgamated Dairy

Workers; two were Chicago dairies whose milk was processed and distributed by members of the C.I.O. union. * * *

"The petition for an injunction rests primarily upon the charge that the defendant union and its officials had entered into a conspiracy to interfere with and restrain interstate commerce in violation of the Sherman and Clayton Acts. It is contended by plaintiffs that the controversy is not a labor dispute within the meaning of the Norris-LaGuardia Act, but is an unlawful secondary boycott of which the purpose is not to unionize the vendors but to obtain for the defendant's employers a Chicago milk monopoly at a sustained high price level, contrary to the Sherman Act. * * *

"Whether rightly or wrongly, the defendant union believed that the 'vendor system' was a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards. To say, as the Circuit Court of Appeals did, that the conflict here is not a good faith labor issue, and that therefore there is no 'labor dispute', is to ignore the statutory definition of the term; to say, further that the conditioned abandonment of the vendor system, under the circumstances, was an issue unrelated to labor's efforts to improve working conditions, is to shut one's eyes to the everyday elements of industrial strife. * * *

"The Court of Appeals concluded that the defendants' picketing activities constituted a secondary boycott in violation of the Sherman Anti-Trust Act, and that for the reason regardless of the Norris-LaGuardia Act, the District Court had jurisdiction to grant an injunction even though the case arose out of or involved a labor dispute. In this the Court was in error. * * *"

While the Norris-LaGuardia Act is applicable to cases involving labor disputes, regardless of whether or not the relationship of employer and employee exists, it appears from plaintiff's complaint herein that something approaching the relationship of employer and employee exists in this case.

Some of the members of the defendant union were using powered boats belonging to plaintiff, agreeing to deliver all their catch to plaintiff. (Tr. 13) Plaintiff furnished certain facilities for defendants, such as net racks, tanning tanks and a mooring place for the defendants' boats. (Tr. 11)

The collective bargaining history of plaintiff and defendants, and the closed shop provision of the contracts, all of which appertain to the defendants' working conditions, makes it apparent from the face of plaintiff's complaint that a labor dispute is involved.

In United States v. Hutcheson, supra, the Court said:

> "The Norris-LaGuardia Act removed the fetters upon trade union activities, which according to judicial construction Section 20 of the Clayton Act had left untouched, by still further narrowing the circumstances under which the federal courts could grant injunctions in labor disputes. More especially, the Act explicitly formulated the "public policy of the United States" in regard to the industrial conflict, and by its light established that the allowable area of union activity was not to be restricted, as it had been in the Duplex case, to an immediate employer-employee relation. Therefore, whether

trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and Section 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct * * *.

"An indictment may validly satisfy the statute under which the pleader proceeded, but other statutes not referred to by him may draw the sting of criminality from the allegations. Here we must consider not merely the Sherman Law but the related enactments which entered into the decision of the district court.

"To be sure, Congress expressed this national policy and determined the bounds of a labor dispute in an act explicitly dealing with the further withdrawal of injunctions in labor controversies. But to argue, as it was urged before us, that the Duplex case still governs for purposes of a criminal prosecution is to say that the which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison. It would be strange indeed that although neither the Government nor Anheuser-Busch could have sought an injunction against the acts here challenged, the elaborate efforts to permit such conduct failed to prevent criminal liability punishable with imprisonment and heavy fines. That is not the way to read the will of Congress, particularly when expressed by a statute which, as we have already indicated, is practically and historically one of a series of enactments touching one of the most sensitive national problems. Such legislation must not be read in a spirit of mutilating narrowness."

The decision of the Circuit Court of Appeals in the case at bar, we believe, is in conformity with the foregoing authorities. It strikes from the decree

of the lower court, an injunction extremely broad in its scope, an injunction which suppressed and imposed its terms not only upon these respondents but upon its affiliated labor unions, an injunction issued without jurisdiction of the court in that the facts come within the purview of the Norris-La-Guardia Act. The petitioner has not complied with the procedural prerequisites that are essential under said Act, where a labor dispute is involved.

We therefore submit that petitioner's application for writ of certiorari should be denied.

Respectfully submitted,

LEE PRESSMAN,
BEN ANDERSON,
Attorneys for Respondents.